

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MATTHEW J. HUTCHINSON,

Petitioner,

v.

DIRECTOR, NEVADA DEPARTMENT OF
CORRECTIONS, et al.,

Respondents.

Case No. 3:10-cv-00229-MMD-VPC

ORDER

This represented habeas matter comes before the Court on petitioner's motion requesting submission on the current pleadings (dkt. no. 22) as well as on a preliminary review of the merits.

The motion informs the Court that petitioner will not be seeking to reopen the pleadings following upon the earlier order (dkt. no. 21) allowing an opportunity to do so. The motion will be granted, and the Court therefore will proceed to decision on the petition on the current pleadings, subject to the remaining discussion herein.

Following a preliminary review of the merits, the Court notes that respondents have not filed a copy of the transcript from the October 16, 2008, state post-conviction evidentiary hearing. Prior counsel for respondents stated in the answer that the transcript had been requested a number of times and would be filed on receipt. (Dkt. no. 10, at 3 n.2.) Respondents have not filed the transcript as yet. The state court record materials on file appear to confirm that the transcript was in fact prepared during the state proceedings. (See dkt. no. 13, Ex. 62, at 3 (at electronic docketing page 8)(citing to the transcript in appellate brief).)

1 The Court additionally would like to have copies of the four pertinent exhibits filed
2 at the evidentiary hearing available in the federal record. The exhibits consist of
3 juvenile court records upon which petitioner's claim of a conflict of interest by defense
4 counsel is based. (See dkt. no. 13, Ex. 62, at 2-3 (at electronic docketing pages 7-
5 8)(describing the four exhibits in question).) Given that the exhibits are from juvenile
6 proceedings, respondents may file the exhibits under seal. If the exhibits already are
7 part of the federal record, respondents instead may reference where the exhibits
8 currently may be found in the federal record in lieu of a redundant filing.

9 If the state district court clerk continues to delay forwarding the transcript and/or
10 the exhibits to respondents' counsel, counsel may consider whether copies of the
11 materials more expeditiously may be obtained through the Supreme Court of Nevada
12 from the appellate record. If that is not possible and respondents need an order from
13 this Court to expedite production from the state district court clerk, the Court will
14 entertain a motion for an appropriate order to the state court clerk.

15 It does not appear to the Court that the supplemental record filings will require
16 reopening the pleadings. At the time of the recent motion by the now-represented
17 petitioner to submit the case on the existing pleadings, petitioner had referenced the
18 state court evidentiary hearing in the *pro se* petition, respondents had stated that a copy
19 of the transcript would be filed, and the transcript was not yet on file. The absence of
20 the transcript from the record at that time thus was a known circumstance when
21 petitioner moved to submit the case on the existing pleadings. The Court will afford
22 petitioner a brief opportunity to request other relief following the supplementation of the
23 record, but the Court otherwise will be proceeding forward to final disposition as
24 promptly as possible.

25 IT IS THEREFORE ORDERED that petitioner's motion requesting submission on
26 the current pleadings (dkt. no. 22) is GRANTED, subject to the remaining provisions in
27 this order.


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1 IT IS FURTHER ORDERED that, within thirty (30) days of entry of this order,
2 respondents shall file supplemental state court record exhibits with copies of: (a) the
3 transcript of the October 16, 2008, state post-conviction evidentiary hearing; and (b) the
4 four exhibits filed at the evidentiary hearing pertaining to the juvenile proceedings, which
5 may be filed under seal. If copies of the latter items currently are in the federal record,
6 respondents may designate their location in lieu of filing additional copies.

7 IT IS FURTHER ORDERED that petitioner shall have fourteen (14) days from the
8 filing of the supplemental exhibits to file any motion requesting additional relief from the
9 Court prior to final submission of the case for disposition on the merits.

10 Requests for extension of the deadlines established herein will be considered
11 only in extraordinary circumstances. Extensions of time based upon scheduling
12 conflicts with other cases on the docket of this Court should be sought in the later-filed
13 case absent such extraordinary circumstances.

14 DATED THIS 3rd day of May 2013.

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18 MIRANDA M. DU
19 UNITED STATES DISTRICT JUDGE
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